

**UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF NEW YORK**

OS INTERNATIONAL INC.,)	Case No. _____
)	
Plaintiffs,)	COMPLAINT FOR BREACH OF
)	CONTRACT, ACCOUNT STATED,
-v-)	AND CONVERSION
)	
TAIYO SEAFOOD NY INC,)	
)	Demand for Jury
Defendants.)	

**COMPLAINT FOR BREACH OF CONTRACT, ACCOUNT STATED,
AND CONVERSION**

Plaintiff OS International Inc., by and through undersigned counsel, files this Complaint against Defendant Taiyo Seafood NY Inc., et al., and states as follows:

PARTIES

1. Plaintiff OS International Inc. is a fish importer and is incorporated under the laws of the State of California and has its principal place of business in the State of California at 21151 S. Western Ave, Suite 135K, Torrance, California 90501.

2. On information and belief, Defendant Taiyo Seafood NY Inc. is a food wholesale company and is incorporated under the laws of the State of New York and has its principal place of business in the State of New York at 38 Locust Street, Brooklyn, NY 11206 and regularly conducts business in New York.

3. At all times relevant herein, Defendant's agents, servants and/or employees acted within the course and scope of their employment.

JURISDICTION AND VENUE

4. Jurisdiction is based on diversity under 28 U.S.C. §1332 as OS International, Inc. and Taiyo Seafood NY Inc. in this action are citizens of different states and the amount in controversy is more than 75,000, excluding interest and costs.

5. Venue in this District is appropriate under 28 U.S.C. §1391 (b)(2) as the events giving rise to this action occurred in this district.

STATEMENT OF THE CLAIM

6. On or about July 19, 2018, the parties entered into a contract for the sale of seafood from OS International Inc. (hereafter referred to as "OSI" or "Plaintiff") to Taiyo Seafood NY Inc. (hereafter referred to as "Taiyo" or "Defendant"). On July 7, 2018, OSI sent a credit application to Taiyo which Taiyo returned as an attachment via email on July 19, 2018. Exhibit "A".

7. Relevant terms of the credit application which created the agreement between OSI and Taiyo provided in part: "The terms are Fresh items 12days for ETA and Frozen items 30days for FOB. Accounts paid in the time frame will be charged 1.5% interest rate per month and future orders will be C.O.D. basis until the account is current. Should collection or legal action be required to collect past dues, fee for such action will be added to your account." Exhibit "B".

8. The parties agreed that OSI would supply quantities of seafood per orders made by Defendant to be delivered to Defendant's location listed above in exchange for which Defendant was to pay OSI the invoiced amount for the quantity and product requested at the terms provided.

9. Starting on or about June 28, 2018, Defendant sent SMS messages to inquire about products, availability and begin placing orders, as is customary in the industry. Exhibit "C".

10. OSI accepted Defendant's orders and supplied orders to Defendant's location listed above. Plaintiff confirmed the cost of the seafood supplied. Defendant acknowledged the amount and quantity.

11. Plaintiff rendered invoices to Defendant which included "TERMS" of 30 days and 7 days. Exhibit "D".

12. Defendant accepted, received, and paid for invoices prior to the outstanding invoices.

13. Defendant ordered and received seafood from OSI during December 2018, January 2019 and February 2019.

14. OSI sent Defendant invoices totaling \$76, 419.53 for the orders placed. See Exhibit "D".

15. Taiyo received and viewed all of these invoices reflected in Quickbooks. Exhibit "E".

16. Defendant did not object to the invoiced amount at any time reasonable after

receipt nor at any time thereafter.

17. Defendant continued to place orders. OSI continued to fulfill orders.

18. Defendant stopped making payments and the accumulated balance due of \$76,419.53 plus the agreed late interest charge in the amount of 1.5% per month remains outstanding and owing.

19. Defendant breached the contractual agreement to pay for the product received, refused to pay and continues to refuse to pay even though OSI has continued to request the amount owed.

20. Subsequently, OS International, Inc., had to hire an attorney to send a demand letter to Defendant requesting payment of the remaining amount plus interest accrued to that date in the amount of \$77,652.14. Exhibit "F".

21. Defendant did not acknowledge or reply in any way to the demand letter.

FIRST CAUSE OF ACTION
(Breach of Contract)

22. OSI hereby restates and realleges the allegations set forth in paragraphs 1 through 21 above and incorporates them by reference.

23. Taiyo entered into a written contract and continued to place orders with OSI for seafood to be supplied and delivered by OSI.

24. OSI accepted Taiyo's orders for seafood and delivered seafood to Taiyo in response to orders that were placed.

25. OSI has demanded payment for all shipments of seafood supplied to Taiyo,

including invoices and a formal demand letter.

26. OSI is informed and believes and thereon alleges that Taiyo accepted and used/ sold or disposed of all of the seafood supplied to them by OSI.

27. As of the filing of this Complaint, OSI has not received payment in the balance due of \$76, 419.53 plus the agreed late interest charge in the amount of 1.5% per month for goods delivered to Defendant.

28. Accordingly, as a direct and proximate result of Taiyo's breach of contract as alleged herein, OSI has sustained damages, including contractual damages, as a commercial seller lost profits, incidental and consequential damages, and has been forced to incur attorneys' fees and legal expenses in an effort to collect payment outlined in the contract in the contract amount. Said amount is now past due creating great hardship on Plaintiff.

SECOND CAUSE OF ACTION
(Account Stated)

29. OSI hereby restates and realleges the allegations set forth in paragraphs 1 through 21 above and incorporates them by reference.

30. OSI supplied seafood to Defendant per Defendant's request in the quantity and amount Defendant requested. Plaintiff confirmed the cost of the seafood supplied. Defendant acknowledged the amount and quantity. Defendant received and accepted seafood supplied by Plaintiff.

31. Defendant received invoices from OSI as shown Exhibit "D" and the fact that

Defendant initially paid for orders based on the invoiced amounts.

32. Defendant continued to order from Plaintiff. Plaintiff continued to supply seafood based on Defendant's orders. OSI continued to send Defendant invoices for Defendant's purchases.

33. Defendant did not object to any of OSI's invoiced amount within a reasonable time or at any time thereafter.

34. Defendant stopped paying but retained the goods.

35. Defendant was invoiced and failed to pay the invoiced amount due of \$76,419.53 plus the agreed late interest charge in the amount of 1.5% per month.

36. Defendant should be required to disgorge all monies, profits and gains which it has obtained or will unjustly obtain in the future at the expense of OSI, and a constructive trust should be imposed thereon for the benefit of OSI.

THIRD CAUSE OF ACTION **(Conversion)**

37. OSI hereby restates and realleges the allegations set forth in paragraphs 1 through 21 above and incorporates them by reference.

38. Plaintiff had the rights to all seafood shipped to Defendant. Plaintiff was deprived of its interest in the seafood by Defendant's unauthorized act of keeping the seafood shipped by Plaintiff and refusing to pay for the goods receive.

39. As a commercial seller, Plaintiff suffered lost profits in addition to monetary damages.

40. Plaintiff suffered monetary damages in the invoiced amount as well as incidental damages, and money spent to collect these monies owed including attorney, collections, and litigation costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant an entry of judgment against the defendant in the following relief:

- A. Entry of judgment in favor of OSI against Taiyo on all claims for relief;
- B. An order of order awarding OSI damages it has sustained as a result of Taiyo's breaches in the amount \$76, 419.53 plus 1.5% interest per month;
- C. Additional prejudgment interest at the statutory rate from the time payments came due;
- D. Post-judgment interest,
- E. Attorneys' fees;
- F. Cost of suit pursuant to statute; and
- G. Any and all other legal and equitable relief as may be available under the law that this Court may deem proper.

Respectfully submitted,

Dated: April 11, 2019

By:



Jeffrey M. Carr, Esq.
Attorney for Plaintiff
940 Bronx Park South, 2D
Bronx, NY 10460

REQUEST FOR JURY TRIAL

Plaintiff hereby requests to have this case tried before a jury.

Dated: April 11, 2019

By: 

Jeffrey M. Carr, Esq.
Attorney for Plaintiff
940 Bronx Park South, 2D
Bronx, NY 10460